IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.4722 OF 2005

Sitaram Ganpat Gate : Petitioner

V/s.

The Divisional Joint Registrar, Pune Division, Pune & Ors. : Respondents

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Mr.S.V.Sadavarte for the petitioner.

Mr.A.H.Palekar, Asstt. Govt. Pleader, for the respondent no.1.

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CORAM : S.A. BOBDE, J.

July 20, 2005.

P.C.:

1. The petitioner has challenged the order of the Divisional Joint Registrar, Co-operative Societies, Pune Division, dated 24.6.2005. By the impugned order, the said authority has rejected the petitioner's revision application.

2. In brief, the petitioner's contention was that the respondent-Bank had applied in pursuance of a notice dated 19.10.2002 for grant of the recovery certificate on 16.11.2002. The certificate of recovery was not granted

by the order of the Asstt. Registrar dated 15.2.2003 on the ground that the amount is not due and payable to the respondent-Bank on that date i.e. 15.2.2003. Thereafter, the respondent-Bank moved the Original Application for grant of recovery certificate after the amount, according to him, became due. The recovery proceedings under section 101 were challenged by the petitioner in revision on the ground that the earlier order constituted res judicata in view of section 11 of the C.P.C. The proceedings under section 101 cannot be revived. The revisional authority has rejected this application.

3. Mr.Sadavarte, the learned counsel for the petitioenr, strenuously urged that the Bank has not issued a fresh notice after 19.10.2002 and, therefore, obviously the revival is based on the earlier notice even though subsequently payments may have been made by the petitioner. This is an entirely different argument and has no bearing on the question of res judicata raised by the petitioner before the revisional Court.

4. In the facts of the present case, it is clear that by the earlier order dated 15.2.2002, there was no final adjudication under section 101 and the proceedings were merely filed. The Bank’s application for recovery was

neither rejected nor allowed. Clearly, therefore, the principle of res judicata is not applicable. The Asstt. Registrar may, therefore, proceed to adjudicate under section 101. All contentions of the petitioner on merits are left open.

5. The petition is dismissed.

S.A. BOBDE, J.